

RECEIVED

SEP 14 1993

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
Petition for Rulemaking to Determine)
the Terms and Conditions Under) RM - 8303
Which Tier 1 LECs Should Be)
Permitted to Provide InterLATA)
Telecommunications Services)

**REPLY COMMENTS OF THE
UNITED STATES TELEPHONE ASSOCIATION**

The United States Telephone Association (USTA) respectfully submits these reply comments on the Petition for Rulemaking filed July 15, 1993 by five of the Regional Bell Operating Companies (RBOCs) asking the Commission to establish terms and conditions under which the RBOCs would be able to provide interLATA telecommunications services.¹ This reply responds to some of the other pleadings, addresses the underlying substantive issue of whether relief from the interLATA restriction should be forthcoming for the RBOCs, and identifies an area for terms and conditions that is unique to local exchange carriers.

I. A RULEMAKING PROCEEDING SHOULD BE COMMENCED.

USTA's Statement, filed August 30, said that it would be in the public interest for the Commission to institute a rulemaking to consider the various issues implicated by interLATA relief, but did not state any position on the substantive aspects of the Petition. Some other commenters also suggested it would be in the

¹ USTA uses the term "RBOC" here to identify more than just the parent entity, and includes any controlled subsidiary or affiliate, in line with the current MFJ construction.

public interest to commence a rulemaking, even though they might not agree with all aspects of the Petition.² The benefits of commencing a proceeding outweigh the concerns identified by the opponents of a proceeding. There is a bona fide issue before the Commission, and that issue is significant. No commenter denies the significance of the interexchange entry issue. A proceeding is appropriate, to draw out the various claims of benefit and harm, and to test them fully. The Commission's stated resolve to confront and deal with the major issues of the day would become suspect if it acted to dispose of the Petition without a full proceeding by which the broadest range of concerns and positions could be articulated.³

II. THE COMMISSION SHOULD FOCUS ONLY ON THE COMPANIES SUBJECT TO THE MODIFICATION OF FINAL JUDGMENT.

USTA agrees with MFS that the Petition should not address issues relating to other Tier 1 companies, because these other companies are currently under no MFJ limitation.⁴ Other exchange carriers have been able to diversify freely and successfully into the provision of interLATA services without the need for any special terms and conditions. UTC and the Pennsylvania PUC set out the benefits of additional competition in the interexchange market that could result from new

² See, e.g., Comments of Utilities Telecommunications Council (UTC) at 3.

³ Accord, Pennsylvania Public Utilities Commission (Pennsylvania PUC) at 3.

⁴ MFS Comments at 1. See also Allnet Comments, passim, referring only to the Tier 1 carriers owned by the RBOCs.

entry.⁵ These benefits have been fostered rather than retarded by other exchange carriers' participation in the interexchange business. Rather than subjecting these other Tier 1 companies to new regulatory terms and conditions, their experience should provide the basis for a presumption that extensive terms and conditions are unnecessary.

III. INTEREXCHANGE RELIEF SHOULD BE FORTHCOMING WITHIN A BALANCED FRAMEWORK OF PUBLIC POLICIES, AND WITH TARGETED CONDITIONS RELATED TO THE CONTINUED ABILITY OF THE INDEPENDENT TELEPHONE COMPANIES TO REMAIN VIABLE IN A TECHNOLOGICALLY DYNAMIC AND INCREASINGLY COMPETITIVE MARKETPLACE.

Just last week, USTA agreed on a position that generally supports full RBOC entry into the interexchange market. USTA will support RBOC interexchange relief as part of a public policy framework that must balance continuation of universal service, open entry by exchange carriers into competitive areas, and fair competition.

One of the factors that led to this decision was the increasing recognition of the interrelated nature of many new services and service capabilities being deployed by carriers in their networks. The interexchange barrier impacts competition in the industry, and in particular, impacts the abilities and options of both RBOC and non-RBOC exchange carriers to deploy new technology, and to compete fully in the delivery of the broad range of telecommunications services to

⁵ UTC at 3-4; Pennsylvania PUC at 2.

customers. When the MFJ Court approved the LATA-based division of assets set out in the AT&T Plan of Reorganization in 1983, the Court stated that the LATA classifications were intended to "bind only the Operating Companies and affect only their ability to provide service; they do not bind the interexchange carriers or the Independents and they will not in any way affect their ability to provide service."⁶ (emphasis added.) That has not proved to be the case for the independent telephone companies as communications network technology has unfolded.

Judge Greene also said in that Opinion that nothing in the Court's approval of the LATA classifications was intended in any way to restrict the regulatory bodies in the exercise of their legitimate authority.⁷ It is appropriate for the Commission to use that authority to deal with the consequences of the MFJ that have retarded the efficient deployment of advanced services. The MFJ Court has had to act to assure that independent LIDB and 800 signalling queries could be transported over RBOC networks to and from databases.⁸ The inability of RBOCs to provide

⁶ See U.S. v. Western Electric, et.al., Civ. No. 82-0192, Opinion filed July 8, 1983 at 130. (The LATAs were addressed in U.S. v. Western Electric, et. al., 569 F.Supp. 990 (D.D.C. 1983) (LATAs proposed) and in U.S. v. Western Electric, et.al., 569 F.Supp. 1057 (D.D.C. 1983) (LATAs approved with final form of Plan of Reorganization), aff'd sub.nom., California v. FCC, 464 U.S. 1013 (1983).)

⁷ Id. at note 242.

⁸ See Motion for Waiver of Section II(B) of the Modification of Final Judgment to Permit the BOCs to Transport 800 and LIDB Database Queries for Calls that Originate in Independent Telephone Company Service Areas, filed by the United States on April 23, 1991, in U.S.v. Western Electric, et.al., and Order, February 10, 1992.

interLATA handoff and automatic call delivery has impacted independent telephone companies' cellular affiliates' abilities to compete in coverage and seamlessness. Similar technology issues are bound to emerge which will require additional consideration.⁹ The Commission has already seen how the broad involvement of independent telephone companies in emerging new services is essential to achieve the full benefits.¹⁰ Limiting these companies is directly contrary to the Act.¹¹ The Commission should find that the public interest requires that the concerns of independent telephone companies be addressed.

USTA's support of full interLATA relief is accompanied by advocacy of a core set of conditions and safeguards. These core conditions and safeguards are uniquely targeted, and are required to assure that independent telephone companies will retain the critical economic mass necessary to continue to deliver universal service to customers in their telephone service areas at a time when the transition to greater telecommunications competition is putting new pressures on their abilities to do so.

⁹ These could emerge with personal communications services, intelligent network issues or other emerging applications and technologies.

¹⁰ Provision of Access for 800 Service, CC Docket No. 86-10, 102 FCC 2d 1387 (1986); MO&O on Further Reconsideration, 8 FCC Rcd 1038 (1993)(independent telephone company access and conversion requirements.)

¹¹ 47 U.S.C. 157(a).

USTA anticipates there must be legislative or regulatory action, as appropriate, that will provide essential intra-industry safeguards that are necessary to maintain the viability of exchange carriers through the current transition. So that independent telephone companies will retain that critical economic mass necessary to continue to deliver universal service to customers in their telephone service areas, USTA supports the continuation of one key public policy, nationwide geographically averaged rates, and affirmative establishment of another, set out below.

USTA believes, first, that one of the core conditions for any interexchange competition - with or without RBOC entry - is the continuation of geographically averaged basic MTS toll rates at reasonable levels.

Second, USTA believes that RBOC interexchange entry should afford independent telephone companies in a state where the RBOC has a local telephone company the opportunity to choose one of three new options for participation in interexchange service provision. These three options should be available to an independent telephone company to choose with respect only to the RBOC that has local exchange operations in the same state as the independent. An independent telephone company should be able to market the interexchange services of that RBOC to the independent's local service customers, much like a reseller or retail merchant. Alternatively, an independent telephone company should be assured

that the (same state) RBOC will offer the same toll plans to the independent's customers as it offers to anyone else and also uses the independent's access services to do so. Finally, an independent telephone company should be able to be the provider of the interexchange services to the independent's customers, but the RBOC should retain the freedom to negotiate statewide, nationwide, or larger private network bids even if the bid might include a large customer in the independent's area.

These options, to be recognized as lawful by governmental action, are the only conditions that USTA, in its role representing the full range of exchange carrier interests, concludes are needed for full RBOC entry into the interexchange marketplace. They are grounded in the recognition that the independent telephone companies remain an essential partner of government in achieving its universal service objectives, and that it is bound to be increasingly difficult to maintain the level of revenue needed to provide the new services and technologies expected of exchange carriers by the Commission. They also are targeted to the geographic areas where concerns by the independent telephone companies could emerge. These options for independent telephone companies were viewed as essential to serve the public interest, and USTA will look for government action to include them in any interexchange relief package. The Commission should recognize these concerns, with any significant competitive questions about targeting policy compliance with the antitrust laws left for Congress to resolve.

Interexchange relief is not the only action demanded of government, although that is the objective of this Petition. Such relief does not bring benefits in a vacuum. Broader action related to the exchange carriers (not within this rulemaking) will bring additional related benefits.¹² A better transition to full telecommunications competition is needed than what exists today. Public policymakers throughout government must increase the attention they are giving to the proper balancing of three factors: continuing universal service, open entry to communications markets, and fair competition. These three factors are interrelated:

- o Continuation of universal service anticipates the existence of appropriate support mechanisms. It also anticipates a commitment to universal access to advanced telecommunications services, and, to achieve that expansion to universal access, a commitment to affirmative endorsement of infrastructure sharing among interconnecting exchange carriers who remain responsible for deploying advanced access, signalling and other capabilities in the backbone networks of the nation.

- o Open entry is the area in which interLATA restrictions are but one major obstacle.¹³ It is also correct that the ban on RBOC provision of information

¹² See also Pennsylvania PUC at 4 (broader concerns regarding universal service and related policies need to be considered.)

¹³ The comments of Comptel argue that the institutional barrier to greater interexchange competition actually is the lack of equal access in some parts of the

services has only recently been lifted, and that these opportunities for the RBOCs and other exchange carriers to deliver information service benefits should not be removed. Likewise, USTA has supported MFJ manufacturing relief on conditions, as well as full relief from the ban on exchange carrier provision of video programming. Each of these restrictions on exchange carriers has operated to limit competition.

o The third part of the balancing act involves fair competition (and fair rules governing competition.) The opportunity for entry by an RBOC (or another exchange carrier) into any competitive business could be a hollow one if the regulatory scheme discriminates against that entity on the basis of its status or its affiliation. This would be particularly onerous where a carrier starts in a new market with a zero market share, and will not be able to affect the competitiveness of that market. Regulatory parity, broadbased contribution mechanisms to generate

country. Comptel Comments at 7-8. This is not accurate. The proportion of all access lines without equal access is very small, and is not an obstacle to the provision of interexchange service.

Equal access remains unavailable in a few parts of the nation for many of the same universal service reasons that must be taken into account with respect to interexchange competition generally. Because of the small areas, higher revenue-to-expense ratios, or limited additional revenue potential, interexchange carriers have not asked for equal access in these areas, and thus there has been no trigger of the current regulatory cost recovery mechanism. MTS-WATS Market Structure, CC Docket No. 78-72, Phase III, 100 FCC 2d 860 (1985), on reconsideration, December 9, 1985, on further reconsideration, January 8, 1986. In the absence of an economic incentive to recover the comparatively significant conversion costs, a small independent telephone company will be prudent and not spend the money.

the necessary support flows (for high cost assistance and other public policy objectives), and access reform necessary to reflect the growth of new access providers each play a significant part in promoting fair competition.


The USTA board decision culminated a number of years of active consideration of this issue, and it was strongly supported by USTA's Small Company Committee. USTA will work to assure that the local exchange interests of all its members are promoted as these issues move forward, and that each of the articulated concerns is fully voiced as needed elsewhere, just as it is being set out here.

IV. CONCLUSION.

With these items in mind, USTA supports Commission consideration of the Petition and commencement of a rulemaking proceeding.

Respectfully submitted,

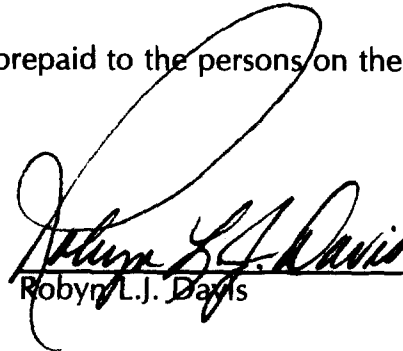
UNITED STATES TELEPHONE ASSOCIATION

By: 
Martin T. McCue
Vice President and
General Counsel
900 19th Street, N.W.
Washington, D.C. 20006-2105
202-835-3114

September 14, 1993

CERTIFICATE OF SERVICE

I, Robyn L.J. Davis, do certify that on September 13, 1993 copies of the Reply Comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.


Robyn L.J. Davis

Kathy Levitz
Acting Chief -
Common Carrier Bureau
Federal Communications Comm.
1919 M Street, NW
Room 500
Washington, DC 20554

Michael K. Kellogg
Kellogg, Huber & Hansen
1301 K Street, NW
Suite 1040E
Washington, DC 20005

Edward D. Young, III
John M. Goodman
Bell Atlantic
1710 H Street, NW
8th Floor
Washington, DC 20006

William Barfield
Richard Sbaratta
BellSouth
1155 Peachtree Street, NE
Suite 1800
Atlanta, GA 30367

Gerald E. Murray
Thomas J. Hearity
NYNEX
1113 Westchester Avenue
White Plains, NY 10604

James P. Tuthill
Alan F. Ciamporero
Pacific Telesis Group
1275 Pennsylvania Avenue, NW
Washington, DC 20004

Paul Lane
Dale E. Hartung
Thomas J. Horn
Southwestern Bell
175 East Houston
Room 1260
San Antonio, TX 78205

Martin E. Grambow
Southwestern Bell
1667 K Street, NW
Washington, DC 20006

International Transcription Service
2100 M Street, NW
Suite 140
Washington, DC 20036

Maureen A. Scott
Veronica A. Smith
John F. Povilaitis
Pennsylvania PUC
G-28 North Office Building
Commonwealth & North Streets
P.O. Box 3265
Harrisburg, PA 17105

Cindy Z. Schonhaut
MFS Communications Company, Inc.
3000 K Street, NW
Suite 300
Washington, DC 20007

Andrew D. Lipman
Russell M. Blau
Swidler & Berlin, Chtd
3000 K Street, NW
Washington, DC 20037

Bob F. McCoy
Joseph W. Miller
John C. Gammie
Wiltel Inc.
One Williams Center
Suite 3600
Tulsa, OK 74102

Joseph P. Markoski
Andrew W. Cohen
Squire, Sanders & Dempsey
1201 Pennsylvania Avenue, NW
P.O. Box 407
Washington, DC 20044

Catherine Reiss Sloan
LDDS Communications, Inc.
1825 Eye Street, NW
Washington, DC 20006

Danny E. Adams
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006

John T. Lenahan
Larry A. Peck
Frank M. Panek
Ameritech
2000 W. Ameritech Center Drive
Room 4H86
Hoffman Estates, IL 60196

Genevieve Morelli
Competitive Telecommunications
Association
1140 Connecticut Avenue, NW
Suite 220
Washington, DC 20036

Richard E. Wiley
Danny E. Adams
Edward Yorkgitis, Jr.
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006

Randolph J. May
Timothy J. Cooney
Sutherland, Asbill & Brennan
1275 Pennsylvania Avenue, NW
Washington, DC 20004

Roy L. Morris
Allnet Communication Services, Inc.
1990 M Street, NW
Suite 500
Washington, DC 20036

Jeffrey L. Sheldon
Thomas E. Goode
Utilities Telecommunications Council
1140 Connecticut Avenue, NW
Suite 1140
Washington, DC 20036